

1 THE HONORABLE TIFFANY M. CARTWRIGHT
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 UNITED STATES FIRE INSURANCE
10 COMPANY, a Delaware corporation;
11 ENDURANCE AMERICAN INSURANCE
12 COMPANY, a Delaware corporation;
13 NAVIGATORS INSURANCE COMPANY, a
14 New York corporation; and AGRICO SALES,
15 INC., a Texas corporation,

16 Plaintiff,

17 v.

18 OXBO, INC. d/b/a OXBO MEGA
19 TRANSPORT SOLUTIONS, an Oregon
20 corporation; and OXBO ENGINEERING,
21 LLC, an Oregon limited liability company,

22 Defendants.

23 v.

24 ALEXANDER GOW, INC., an Oregon
corporation and a Washington corporation,
CSL GLOBAL LIMITED, a Texas
corporation, and a Louisiana corporation,
WESTERN TOWBOAT COMPANY, a
Washington corporation,

Third Party Defendants.

NO. 3:22-cv-05228-TMC

STIPULATION AND ORDER REGARDING
DISMISSAL OF THIRD-PARTY
DEFENDANT WESTERN TOWBOAT
COMPANY

[NOTE ON MOTION CALENDAR:
September 27, 2023]

STIPULATION AND ORDER REGARDING DISMISSAL OF THIRD-PARTY DEFENDANT WESTERN TOWBOAT COMPANY - 1
(Case No. 3:22-cv-05228)

LAW OFFICES
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STIPULATION

The parties, by and through their undersigned counsel of record, hereby stipulate, consent and agree as follows:

1. WESTERN TOWBOAT COMPANY (“WTC”) shall be dismissed from the case voluntarily and with prejudice and without cost to any other party pursuant to Federal Rule of Civil Procedure 41(a)(2).

2. At trial, the finder of fact will be asked to determine, among other things, whether WTC breached a duty and, if so, whether that breach contributed to plaintiffs' damages. If fault is assigned to WTC, plaintiffs will not collect damages from the remaining defendants and third party defendants to the extent those damages are determined by the fact finder to be due to the fault of WTC. For example, if defendants and third party defendants are determined to be liable for all of plaintiffs' damages, and 20% of the fault is attributed to WTC, then Plaintiffs will only be able to collect 80% from the Defendants. None of the fault allocated to WTC will be collectible from the other defendants and third party defendants, and Plaintiffs will not seek to collect from WTC the damages, if any, that are attributable to WTCs fault.

3. Western Towboat Company shall make its employees available for deposition under the Federal Rules of Civil Procedure as if Western Towboat were a party to this action.

4. This dismissal shall not be considered to be a settlement amongst the plaintiffs, defendants and third-party defendants. Principles of joint and several liability as to these remaining parties in the lawsuit shall remain unaffected by this stipulation.

STIPULATED AND AGREED TO this 27th day of September, 2023.

HARRIGAN LEYH FARMER & THOMSEN
LLP

HOLMES WEDDLE & BARCOTT, PC

s/ Michelle Buhler
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Charles S. Jordan, WSBA No. 19206
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s/ Svetlana P. Spivak
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*Attorneys for Defendant and Third Party
Plaintiff Oxbo, Inc.*

STIPULATION AND ORDER REGARDING DISMISSAL OF THIRD-PARTY DEFENDANT WESTERN TOWBOAT COMPANY - 2
(Case No. 3:22-cv-05228)

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1 *Company, and Plaintiff and Counter Defendant*
2 *Agrico Sales, Inc.*

3 DAVIS ROTHWELL EARLE & XOCHIHUA, LINDSAY HART, LLP
4 P.C.

5 *s/ Christopher M. Parker*
6 Christopher M Parker, WSBA No. 48561
7 Nicholas V. Beyer, Pro Hac Vice
8 *Attorneys for Defendant Oxbo Engineering,*
9 *LLC*

10 *s/ James McCurdy*
11 James McCurdy, WSBA No. 40540
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14 BAUER MOYNIHAN & JOHNSON LLP

15 *s/ Donald K. McLean*
16 Donald K. McLean, WSBA No. 24158
17 Mark A. Krisher, WSBA No. 39314
18 *Attorneys for Third Party Defendant and*
19 *Counter Claimant Western Towboat Company*

ORDER

Having considered the parties' stipulation, the Court hereby orders that:

1. WESTERN TOWBOAT COMPANY ("WTC") shall be dismissed from the case voluntarily and with prejudice and without cost to any other party pursuant to Federal Rule of Civil Procedure 41(a)(2).

2. At trial, the finder of fact will be asked to determine, among other things, whether WTC breached a duty and, if so, whether that breach contributed to plaintiffs' damages. If fault is assigned to WTC, plaintiffs will not collect damages from the remaining defendants and third party defendants to the extent those damages are determined by the fact finder to be due to the fault of WTC. For example, if defendants and third party defendants are determined to be liable for all of plaintiffs' damages, and 20% of the fault is attributed to WTC, then Plaintiffs will only be able to collect 80% from the Defendants. None of the fault allocated to WTC will be collectible from the other defendants and third party defendants, and Plaintiffs will not seek to collect from WTC the damages, if any, that are attributable to WTCs fault.

3. WTC shall make its employees available for deposition under the Federal Rules of Civil Procedure as if Western Towboat were a party to this action.

4. This dismissal shall not be considered to be a settlement amongst the plaintiffs, defendants and third-party defendants. Principles of joint and several liability as to these remaining parties in the lawsuit shall remain unaffected by this stipulation.

IT IS SO ORDERED.

Dated this 28th day of September 2023.



Tiffany M. Cartwright
United States District Court Judge

1
2 Presented by:

3 HARRIGAN LEYH FARMER & THOMSEN LLP

4 *s/ Michelle Buhler*

5 Michelle Buhler, WSBA No. 16235
Charles S. Jordan, WSBA No. 19206
6 *Attorneys for Plaintiffs United States Fire*
Insurance Company, Endurance American
Insurance Company, Navigators Insurance
7 *Company, and Plaintiff and Counter Defendant*
Agrico Sales, Inc.

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STIPULATION AND ORDER REGARDING DISMISSAL OF THIRD-PARTY DEFENDANT WESTERN TOWBOAT COMPANY - 5
(Case No. 3:22-cv-05228)

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